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August 19, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: May 18, 2004

Case No.: TIA-0098

XXXXXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Applicant did not have an illness related to a toxic exposure at DOE. The OWA accepted the Panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

I. Background

A. The Energy Employees Occupational Illness Compensation Program Act

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE.^{1/}

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel assesses whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3). In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests the claim. 42 U.S.C. § 7385o(e)(3).

^{1/} The Department of Labor administers the other program. See 20 C.F.R. Part 30; www.dol.gov/esa.

As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program.^{2/}

B. Procedural Background

The Applicant was employed as a secretary at DOE's Oak Ridge site from 1991 to 1996. The Applicant filed an application with OWA, requesting physician panel review of one illness, Chronic Inflammatory Demyelinating Polyneuropathy or Neuropathy (CIDP or CIDN). The Applicant claimed that she was exposed to toxic substances, but she does not know what substances she was exposed to. She claimed that the building in which she worked has since been torn down and a large amount of earth removed from the area.

The Physician Panel rendered a determination on the illness after consulting with a board certified neurologist, who stated that CIPN is not caused by exposure to toxic substances. The Panel rendered a negative determination on the CIPN. The OWA accepted the Physician Panel's determination. See OWA February 10, 2004 Letter. The Applicant filed the instant appeal.

In her Appeal, the Applicant maintains that the negative determination is not correct. The Applicant states that she was healthy until she began working at the Oak Ridge site.

II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the panel address the claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

We have not hesitated to remand an application where the Panel report did not address all the claimed illnesses,^{3/} applied the wrong standard,^{4/} or failed to explain the basis of

^{2/} See www.eh.doe.gov/advocacy.

^{3/} *Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

^{4/} *Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

its determination.^{5/} On the other hand, mere disagreements with the panel's opinion are not a basis for finding panel error.

In this case, the Applicant's argument on appeal, that she was healthy until she began working at the Oak Ridge site, is not a basis for finding panel error. As mentioned above, the Physician Panel addressed the claimed illness, going as far as to consult with an expert in the field of neurology; made a determination; and explained the basis of that determination. The Applicant's arguments are merely disagreements with the panel's medical judgment, rather than indications of panel error. Accordingly, the Appeal does not provide a basis for finding panel error and, therefore, should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0098 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: August 19, 2004

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Id.